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10/658,682

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David W. Plank

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EXAMINER

WONG, LESLIE A

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The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID W. PLANK and
DANIEL J. LEWANDOWSKI

Appeal 2011-001596
Application 10/658,682
Technology Center 1700

Before EDWARD C. KIMLIN, TERRY J. OWENS, and
KAREN M. HASTINGS, *Administrative Patent Judges*.

KIMLIN, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-12, 21 and 22.
We have jurisdiction under 35 U.S.C. § 6(b).

Claims 1 and 12 are illustrative:

1. A method of improving flavor stability in a food product that is
designed to exhibit a crispy or springy characteristic, comprising

incorporating at least one cyclodextrin in the food product in an
amount effective to improve flavor stability, wherein the cyclodextrin is

added to the food product with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat.

12. A method of forming a food treatment composition, comprising:
- a) providing a cyclodextrin;
 - b) hydrating the cyclodextrin with water; and
 - c) mixing the hydrated cyclodextrin with a fat to form a cyclodextrin/fat composition with no additional ingredients contained within the cyclical structure of the cyclodextrin other than fat.

The Examiner relies upon the following references as evidence of obviousness (Ans. 3):

Lee	5,780,089	Jul. 14, 1998
Prasad	6,287,603 B1	Sep. 11, 2001
Suzuki	JP 55034042	Mar. 10, 1980

Appellants' claimed invention is directed to a method of improving flavor and crispiness stability of a food product. The method entails incorporating cyclodextrin in the food product wherein no additional ingredients other than fat are contained within the cyclical structure of the cyclodextrin.

Appealed claims 1-12, 21 and 22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the combination of '042, Lee and Prasad.

We have thoroughly reviewed each of Appellants' arguments for patentability. However, we are in complete agreement with the Examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the Examiner's rejection for essentially those reasons expressed in the Answer.

There is no dispute that the three references applied by the Examiner evidence that it was known in the art to incorporate cyclodextrin in a food product to add or improve flavor, as well as other desirable characteristics. A principal argument advanced by Appellants is that the references do not teach improving crispiness stability of a food product, but are directed to ice cream and other liquid foods. However, Lee expressly teaches that “[t]he flavors can be added to any foodstuffs”, such as main meals, side dishes, etc. (Col. 2, l. 59). Accordingly, we concur with the Examiner that it would have been obvious for one of ordinary skill in the art to incorporate cyclodextrin in any food product to achieve desirable properties and characteristics, including food products of a crispy nature. Furthermore, we point out that appealed claim 12 does not recite any improvement in flavor or crispiness, but simply defines a method of forming a food treatment composition.

Appellants acknowledge that Lee describes a food composition comprising a complex of a pyrolyzed fat/oil flavor, but argue that the present claims “require that the cyclodextrin does not contain an additional ingredient when added to the food product” (App. Br. sentence bridging 12-13). However, as noted by the Examiner, the appealed claims expressly provide for fat as an ingredient in addition to cyclodextrin. Manifestly, the fat/oil flavor of Lee qualifies as a fat. Also, we agree with the Examiner that “[t]he presence or absence of additional components at the time of addition is merely a matter of choice” (Ans. 6, first para.). We are satisfied that one of ordinary skill in the art would have found it obvious to include any compatible ingredient within the cyclical structure of cyclodextrin, or exclude such, in accordance with the desired taste, texture, aroma, etc., including a variety of fats alone.

As a final point, we note that Appellants base no argument upon objective evidence of non-obviousness, such as unexpected results attributed to the incorporation of cyclodextrin into a food product.

In conclusion, based on the foregoing, the Examiner's decision rejecting the appealed claims is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. §1.136(a)(1)(v).

AFFIRMED